Judge Davis Judge Davis

Jany 23 1874.

16 Wall. 318

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~329.~~ 104

THE MICHIGAN CENTRAL RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE MINERAL SPRINGS MANUFACTURING COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

FILED JULY 31, 1871.

Oct. Term 1873

SUPREME COURT OF THE UNITED STATES.

No. 329.

THE MICHIGAN CENTRAL RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE MINERAL SPRINGS MANUFACTURING COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation	3	1
Return of clerk to citation	4	1
Record of State court	5	2
Writ	6	2
Officer's return on writ	10	3
Petition for removal	10	3
Bond on removal	12	4
Order of removal	14	5
Plea	17	6
Amendments to writ	19	6
Second plea	25	8
Replication	29	9
Verdict	30	10
Bill of exceptions	31	10
Exhibit A	39	13
Exhibit B	41	14
Motion for new trial	42	14
Denial of motion	43	15
Judgment	43	15
Petition for writ of error	44	15
Bond on writ of error	45	15
Allowance of writ of error	46	16
Authentication	47	16
Assignment of error	48	16

1 UNITED STATES OF AMERICA,
District of Connecticut, ss:

[SEAL.] The President of the United States to the judges of the circuit court of the United States for the district of Connecticut, greeting:

Because, in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between the Mineral Springs Manufacturing Company and the Michigan Central Railroad Company, a manifest error has happened, to the great damage of the said Michigan Central Railroad Co., as by their complaint appears: We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the fourth day of December
2 next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court, the 15 day of May, in the year of our Lord one thousand eight hundred and seventy-one.

LOREN P. WALDO,
Clerk of the U. S. Circuit Court for the District of Connecticut.

3 UNITED STATES OF AMERICA,
District of Connecticut, ss:

[SEAL.] To the Mineral Springs Manufacturing Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Connecticut, wherein the Michigan Central Railroad Company are plaintiffs, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 15 day of May, in the year of our Lord one thousand eight hundred and seventy-one.

W'M D. SHIPMAN, *Judge.*

4 We hereby accept service.

MINERAL SPRINGS MAN'F'G CO.
By SHIPMAN & HYDE, *Att'ys.*

The answer of Salmon P. Chase, Chief Justice of the Supreme Court of the United States, to the foregoing writ.

The record and process whereof mention is therein made follow in these words, to wit:

5 MINERAL SPRINGS MANUFACTURING Company
vs.
THE MICHIGAN CENTRAL RAILROAD Company.

Be it remembered that, heretofore, to wit, at the term of the circuit court of the United States of America within and for the second circuit and district of Connecticut, held at Hartford, in said district of Connecticut, on the third Tuesday of September, A. D. 1868, there was presented and filed the record of a cause in the words and figures following, to wit:

6 To the sheriff of the county of Hartford, his deputy, or either of the constables of the town of Hartford, within said county, greeting:

By authority of the State of Connecticut, you are hereby commanded to attach, to the value of eight thousand dollars, the goods or estate of the Michigan Central Railroad Company, a body corporate and politic, duly organized & established under & pursuant to the laws of the State of Michigan, & having a principal office & place of business in Detroit, in said Michigan, & them summon to appear before the superior court to be holden at Tolland, within & for the county of Tolland, on the second Tuesday of September, A. D. 1868, then & there to answer unto the Mineral Springs Manufacturing Company, a body politic & corporate, under and pursuant to the laws of said State of Connecticut, & located & doing business in Stafford, in said State, in a plea of their case, whereupon the pl'ffs declare and say that the defendant, heretofore, to wit, on the 11th day of March, A. D. 1868, & ever since,

7 have been common carriers of goods & merchandize, for hire, in and by certain railroad cars and steam vessels, from Jackson, in said State of Michigan to Stafford, in said State of Connecticut. And the def'ts, being such common carriers, the pl'ffs, on the, to wit, 11th day of October, A. D. 1865, at the special instance and request of the def'ts, caused to be delivered to them, the def'ts, at Jackson aforesaid, a large number, to wit, fifty-seven sacks of domestic wool, containing twelve thousand three hundred and two pounds of said domestic wool, belonging to the pl'ffs, & of great value, to wit, of the value of fifteen thousand dollars, said wool to be taken care of, safely and securely carried and conveyed by the def'ts as such common carrier, in and by said cars and steam vessels, from Jackson aforesaid to Stafford aforesaid, & then at Stafford aforesaid, to be safely & securely delivered by the def'ts for the pl'ffs; & in consideration thereof, & of a certain reward to be paid to the def'ts therefor, they, the def'ts then & there undertook & faithfully promised the pl'ffs to take care of the said

8 several sacks and their contents aforesaid, & safely & securely to carry & convey the same in and by said railroad cars & steam vessels, from Jackson aforesaid to Stafford aforesaid, & there safely and securely deliver the same for the pl'ffs; and although the def'ts, as such carriers, then & there had & received the said several sacks and their contents aforesaid, for the purpose aforesaid, yet, not regarding their duty as such carriers, nor their said promise & undertaking, they, the def'ts, have not taken care of the said sacks and their contents aforesaid, or safely & securely carried & conveyed the same from Jackson aforesaid to Stafford aforesaid, nor have they, at Stafford aforesaid, safely & securely delivered the same for the pl'ffs; but the def'ts so carelessly and negligently conducted and behaved themselves with respect

to said several sacks and their contents aforesaid, that, by the carelessness, negligence, and improper conduct of the def'ts & their servants, a large number, to wit, twenty-five of said fifty-seven sacks of wool, containing a large amount, to wit, six thousand pound' of domestic wool, of great value, to wit, of the value of five thousand dollars, became and were, with their said contents, wholly lost to the pl'ffs. And by means
9 of said negligence, carelessness, & improper conduct of the def'ts & their servants, a further large number, to wit, eleven of said fifty-seven sacks of said wool, were, together with the contents of said eleven sacks, consisting of, to wit, three thousand pounds of said domestic wool burnt, scorched, & otherwise injured, whereby the value of the said eleven sacks & the contents thereof was greatly impaired & diminished. And by means of said carelessness & mismanagement of the def'ts & their servants, the pl'ffs were obliged to pay, & did pay a large sum of money, to wit, one hundred dollars in addition freight-charges, in order to recover so much of said wool as was delivered to them at said Stafford.

All which is to the damage of the pl'ffs the sum of six thousand dollars; to recover which, with just costs, this suit is brought—sufficient bonds for prosecution being given by H. K. W. Welch, of Hartford, Connecticut, who is recognized in the sum of $100 to prosecute, &c.

Hereof fail not, but of this, with your doings thereon, make due return according to law.

10 Dated at Hartford, this 21st day of April, A. D. 1868.

N. SHIPMAN,
Justice of the Peace.

HARTFORD COUNTY, *ss:*

HARTFORD, *April 21st*, 1868.

Then, by virtue hereof & by direction of the pl'ff's attorney, I attached as the property of the within-named defendant, one blue-line car, No. 4120; no service was made on the defendants, they being residents of another State and out of my precincts.

Attest: WESTELL RUSSELL,
Sheriff of Hartford.

Fees & travel: Serving & travel in securing property, 2 00; endorsement, 3 00; cash paid for help, .12; taking care of property, 3 00—8 12.

STATE OF CONFECTICUT,
Tolland County, ss:

Superior court, September term, 1868.

MINERAL SPRINGS M'F'G CO.
vs.
MICHIGAN CENTRAL R. R. CO.

To the honorable the superior court, now in session at Tolland, within and for the county of Tolland:

Respectfully represents unto your honors the Michigan Central R.R. Co., a corporation created & established by the laws of the State
11 of Michigan, that, by the law of the United States, it is, by virtue of such creation & establishment, a citizen of the State of Michi-

gan; that it is defendant in the above-entitled action, and that the matter in dispute actually exceed the amount in value, ($500) five hundred dollars, exclusive of costs; wherefore it prays that said action may be removed from the said superior court to the circuit court of the United States for the first circuit and for the district of Connecticut next to be begun and holden at Hartford, within and for the said circuit and district, on the third Tuesday of September next, to wit, on the 15th day of September, A. D. 1868, and it herewith offers to execute & deliver a good & sufficient bond, with surety for the due entry of copies of the said process against said company in the said circuit court of the United States, upon the first day of the session thereof, and for its then appearing according to the requirements of the statutes of the United States in that behalf made and provided.

By its Attorney, F. CHAMBERLIN.

12 HARTFORD COUNTY,
State of Connecticut:

HARTFORD, *September 2nd*, 1868.

Then personally appeared F. Chamberlin, counsel of the Michigan Central Railroad Company, and made oath that the facts set forth in the annexed petition are, according to his best knowledge and belief, true, before me.

THEODORE LYMAN,
Justice of the Peace.

HARTFORD, *Sept. 2nd*, 1868.

We acknowledge due notice of the within petition and exhibition to us of the annexed bond, & that the petition will be presented and filed with the appearance of the defendants, on the first day of the term of the superior court next to be holden at Tolland in and for said county, and we admit the sufficiency of the bond.

WELCH & SHIPMAN,
Att'y' of the Mineral Springs M'f'g Co., Plaintiff.

Know all men by these presents that the Michigan Central Railroad Company, a corporation created and established by the laws of Michigan, as principal, and Franklin Chamberlin, of Hartford, in the
13 State of Connecticut, as surety, are held and firmly bound unto the Mineral Springs Manufacturing Company, a corporation established according to the laws of said State of Connecticut, in the sum of eight thousand dollars, to be paid to said Mineral Springs Manufacturing Company, its successors, and assigns; to which payment the Michigan Central Railroad Company & the said Chamberlain do severally bind themselves, the said railroad company, its successors, & assigns, and the said Chamberlin, his executors, & administrators, firmly by these presents.

Signed in the name of said railroad company by James F. Joy, its president, thereto duly authorized, and its seal duly affixed & signed & sealed by said surety, this 23rd day of May, A. D. 1868.

The condition of this obligation is such, that whereas the Michigan Central Railroad Co. has been sued in an action upon the case by the said Mineral Springs M'f'g Co., which suit is returnable at the term of the superior court for the State of Connecticut, to be held at Tolland, within and for the county of Tolland, in said State, on the first Tuesday of September, A. D. 1868, and whereas the said Michigan

14 Central R. R. Co., being a corporation created & established by the laws of the State of Michigan, and located and having its principal place of business, to wit, at Detroit, in said State of Michigan, is desirous of removing said cause to the circuit court of the United States for the second circuit and district of Connecticut:

Now, therefore, if the said R. R. Co. or its attorney, shall appear & enter in the aforesaid circuit court of the United States at the term thereof next to be begun and holden at Hartford, within & for the district of Connecticut, on the fifteenth day of Sept., A. D. 1868, & on the first day of the session thereof, copies of the aforesaid process against the said Michigan R. R. Co., then this obligation shall be void; otherwise in full force.

[SEAL.] THE MICHIGAN CENTRAL R. R. CO.,
By its President, JAMES F. JOY.
F. CHAMBERLIN. [L. S.]

At a superior court of the State of Connecticut, holden at
15 Tolland, within and for the county of Tolland, on the second Tuesday of September, A. D. 1868—

Present, Hon. Dwight Loomis, judge.

THE MINERAL SPRINGS M'F'G CO., A CORPORATION established according to the laws of this State, and doing business at Stafford, in said State,
against
THE MICHIGAN CENTRAL R. R. CO., A CORPORATION established according to the laws of the State of Michigan, at Detroit, in said State of Michigan, defendant.
} No. 175.

In an action of contract, demanding 6,000 dollars damages, or thereabout, & their costs, as by said writ on file, dated the 21 day of April, A. D. 1868.

The plaintiff appears by their counsel, Mess. Welch & Shipman, & entered their said action, & the def'ts, by F. Chamberlin, esq., their attorney, also caused & entered an appearance, & at the same time filed their motion for the removal of said action to the circuit court of the United States for the second circuit of the United States & the district of Connecticut, next to be holden at Hartford, within & for said circuit & district, on the third Tuesday of September, to wit, the
16 fifteenth day of September, A. D. 1868; and, after hearing the parties on the said motion, it is ordered by this court that said motion be allowed & said action be removed accordingly.

By order of court.

JOSEPH BISHOP, *Clerk.*

STATE OF CONNECTICUT,
County of Tolland:

OFFICE OF CLERK OF SUPERIOR COURT.

I, Joseph Bishop, clerk of the superior court within & for the county of Tolland & State aforesaid, hereby certify that the above and foregoing is a true copy of record in this office.

In testimony whereof I have hereunto set my hand and the seal of said court, this 8th day of September, A. D. 1868.

[SEAL OF COURT.] JOSEPH BISHOP, *Clerk.*

And thereafter, at the said term of the circuit court of the United States, held at Hartford, in the district of Connecticut, on the third Tuesday of September, A. D. 1868, the said defendants, by Messrs. Chamberlin & Hall, their attorneys, duly appeared, and the said plaintiffs, by Messrs. Welch & Shipman, their attorneys, also appeared, and said cause being duly continued, the defendants thereafter, on the first day of April, A. D. 1869, filed in said court their plea, in the words and figures following, to wit:

17 United States circuit court, district of Connecticut, ss.

HARTFORD, *Sept. Term*, 1868.

MINERAL SPRINGS, M'F'G CO.
vs.
MICHIGAN CENTRAL R. R. CO.

I. The defendants deny the truth of the matters contained in the plaintiff's declaration, and for proof thereof put themselves upon the court for trial.

II. The defendants further say that, if the goods were damaged or destroyed while in their custody, they were so damaged or destroyed while in the warehouse of said company, at Detroit, in said State of Michigan, and after said company had discharged its duties as common carriers; and that all damage, if any, so sustained by the plaintiffs in said company's warehouse, were excepted in the contract of carriage entered into by said defendants at the time of the receipt of said goods.

MICHIGAN CENTRAL RAIL R. CO.
By CHAMBERLIN & HULL, *Att'ys.*

18 And thereupon the plaintiffs filed in court their amendments to the declaration, in the words and figures following, to wit:

19 And also, to answer unto the plaintiffs in a further plea of the case, whereupon the plaintiffs further declare and say that the defendants, on the, to wit, eleventh day of October, A. D. 1865, were, and ever since have been, controlling and managing a certain line of railroad or railroads, extending from the city of Detroit, in said State of Michigan, westward, to and beyond the town of Jackson aforesaid, in said State of Michigan. And during all said time the defendants were exercising the employment of receiving, carrying, and delivering goods, wares, and merchandise for hire, and were conducting and holding themselves out as common carriers for hire, upon and over said line of railroad, in behalf of all persons who might see fit to require their services. And in the exercise of such employment, and holding themselves out to the public as such common carriers, the defendants were accustomed, for certain hire and reward to be paid to them therefor, to receive at such town of Jackson, and other places on said line of railroad, goods, wares, and merchandise, to be transported by the defendants and other common carriers, severally over their routes in the line of transit, to said town of Stafford, in said State of Connecticut,

20 and to other places lying eastward of said city of Detroit, which goods so received were, by the defendants, carried upon their said line of railroad to said city of Detroit, and there delivered by the defendants to some other proper common carrier or carriers, to be by such carrier or carriers thence transported in said line of transit

towards the point of destination of said goods, without any other act or agency on the part of either the consignors or consignees thereof than the delivery of the same to the defendants, with suitable directions, as to their destination.

And the plaintiffs say that, on said last-mentioned date, and while the defendants were exercising the aforesaid occupation, and holding themselves out as such common carriers, one V. M. Bostwick, then of said Jackson, at the special instance and request of the defendants, caused, to be delivered to them as such common carriers for hire, certain other goods, wares, and merchandise theretofore sold by said Bostwick to the plaintiffs, to wit, fifty-seven other packages of domestic wool, containing a large amount, to wit, twelve thousand three hundred and two pounds of said domestic wool, all being the property of
21 the plaintiffs, and of great value, to wit, of the value of fifteen thousand dollars; which said last-mentioned wool was so delivered in good order and condition to the defendants, as such common carriers, with suitable directions for the transportation of the same by way of the town of Palmer, in said State of Massachusetts, to the plaintiffs at said town of Stafford; said wool to be safely and securely carried by the defendants as such common carriers, in and by certain cars over their said line of railroad to said city of Detroit, there to be safely and securely delivered in good order and condition to some other proper common carrier or carriers in the line of transit, by way of said town of Palmer to said Stafford, the point of destination.

And in consideration thereof, and of a certain reward to be paid to the defendants therefor, it became the duty of the defendants, and they there and then undertook, and faithfully promised the plaintiffs, to take care of the said several last-mentioned packages and their contents aforesaid, and safely and securely to carry and convey the same, in and by said cars, in their said line of railroad, from Jackson aforesaid to
22 said city of Detroit, and there safely deliver the same in good order and condition to some other proper common carrier or carriers next in said line of transit to said Stafford, by way of said town of Palmer, to be by such other carrier or carriers transported towards the aforesaid point of destination of said goods.

And although the defendants, as such carriers, then had and received the said several last-mentioned packages, and their said contents in good order and condition for the purpose aforesaid, yet, not regarding their duty as such carriers, nor their said promise and undertaking, they (the defendants) did not take care of said last-mentioned several packages or their contents aforesaid; nor did they safely and securely carry the same to said city of Detroit; nor did they at said city of Detroit safely and securely deliver the same in good order and condition to any other common carrier or carriers next in said line of transit to said Stafford, by way of said Palmer, to be by such other carrier or carriers transported from said city of Detroit towards said point of destination.
23 But, on the contrary thereof, said defendants so being such common carriers as aforesaid, so carelessly and negligently behaved and conducted themselves in the premises that, by & through the carelessness, negligence, and default of the defendants, their servants, and agents in the premises, a large number, to wit: Twenty-five of said last-mentioned fifty-seven packages of wool, containing a large amount, to wit, seven thousand pounds of said domestic wool, of the value of six thousand dollars, became, and were, with their contents, wholly lost to the plaintiffs. Also, a further large number, to wit, eleven of said last-mentioned fifty-seven sacks of said wool were, together with the

contents of said eleven sacks, consisting of, to wit, three thousand pounds of said domestic wool, of the value of, to wit, two thousand dollars, burnt, wet, and otherwise injured, whereby the value of said eleven sacks of said wool was impaired to the extent of, to wit, fifteen hundred dollars.

And by means of said carelessness and default of the defend-
24 ants, their servants, and agents, the plaintiffs, in order to get possession of said eleven sacks of said wool, were compelled to and did pay a *a* large sum, to wit, one hundred dollars, in addition to freight charges thereon; said sum of one hundred dollars being claimed as salvage on account of said eleven sacks of wool.

All which is to the damage of the plaintiffs the sum of eight thousand dollars.

And thereafter, on the 6th day of September, A. D. 1870, the defendants filed in court their second plea, in the words and figures following, to wit:

25 U. S. circuit c't, dist. of Conn.

MINERAL SPRINGS M'N'F'G CO.
vs.
MICHIGAN CENTRAL R. R. CO.

Defendants' plea.

Said defendants came, &c., when, &c., & for plea say they did not undertake & promise in manner & form as the said plaintiffs have above thereof complained; and of this they put themselves upon the country for trial.

And said defendants, by leave of court, first had, &c., further defend, plead, and say that they are not a body politic and corporate organized and doing business in manner and form, and for the purposes alleged in plaintiff's declaration.

That said Michigan Central Railroad Company is a corporation created by and existing under and according to a charter granted by the legislature of the State of Michigan, having a railroad in said State, and a depot and its principal office and place of business at said Detroit; and that it has never done business as a common carrier, for hire, except pursuant to the powers granted by said charter, and
26 under the limitations and restrictions and the beneficial provisions therein set forth, which said charter the defendants now here bring into court; that, by the terms of said charter, among other things, the defendants are not responsible for goods "in deposit, in any of their depots, awaiting delivery," as common carriers, but only as warehousemen; that the said defendants, while doing business under their said charter, as common carriers, with liabilities, privileges, and exemptions, as therein set forth and contained, to wit, from Jackson, in said State of Michigan, to Detroit, in said State, received on October, 11, A. D. 1865, at said Jackson, from one E. W. Bostwick, as consignor, articles marked, numbered, and weighing as follows, to wit, articles: "57 sacks of wool," marked Mineral Springs Man'f'g Co., Stafford, C't, via Palmer, weight, 12,302, and agreed with said consignor to transport the same over their railroad to their depot in Detroit, and there to be delivered to agent or order, upon payment of the charges therein, and subject to the rules and regulations established

by the company, and therefore gave to said consignor an agreement in writing and print, the original of which is in the hands of the
27 plaintiffs, so that the defendants cannot produce the same; that it was further agreed between said parties, and set forth in said agreement, that all goods and merchandize would be at the risk of the owner thereof, while in the company's warehouses, except such loss or injury as might arise from the negligence of the agents of the company; that the goods named in said agreement are the same goods described by the plaintiffs in their declaration and for damages to which the' claim to recover of the defendants; that the said goods of the plaintiffs were duly transported from said Jackson to said Detroit, and were, to wit, on the twelfth day of said October, in the defendant's depot, in Detroit, in full performance of the said agreement of the defendants, and were ready, to wit, on the evening of said twelfth day of October, to be delivered to the plaintiffs, or agent, or order, and had been so ready to be delivered a long time, to wit, five days and more, when, by accident, and without negligence or fault of the defendants, their said depot was burned and destroyed, and the damage (if any) occasioned to said goods was occasioned by said fire, and not otherwise; that said
28 goods had so remained in the said depot of the defendants for the accommodation of the plaintiffs, and because no provision was made by the plaintiffs for their removal, and because they were not called for by the plaintiffs, or their agent, or order, or by any carrier in the line of their continued transit, as indicated in said agreement, and upon the way-bill thereof. And the defendants say that, under the law of Michigan, where said contract was made and to be performed, said goods so situated were goods awaiting delivery. And the defendants say that they have, in all things, performed their said agreement, in relation to said goods, according to the terms thereof, and as construed by the laws of Michigan.

MICHIGAN CENTRAL R. R. CO.,
By CHAMBERLAIN & HALL, *Att'ys.*

29 And, the said cause having been duly continued, from time to time, the parties appearing as aforesaid, came on to be heard at this present term of the circuit court of the United States, held at New Haven, within and for the district of Connecticut, the plaintiffs, by Messrs. Shipman and Hyde, appeared, and the defendants, by Messrs. Chamberlain and Hall, also appear, and the plaintiffs file in court their replication to the plea of the defendant in the words and figures following, to wit:

U. S. circuit court. April term, 1871.

MINERAL SPRINGS M'F'G COMPANY
vs.
MICHIGAN CENTRAL RAILROAD COMPANY.

Replication.

And the plaintiffs, as to the said plea of the defendant, and by them first above pleaded, and whereof they have put themselves on the country, doth the like.

To the second plea of the defendants in this case the plaintiffs reply

and say that the allegations contained therein are not true, and this they pray may be inquired of by the country.

30 PLAINTIFF,
By HYDE & SHIPMAN, *Att'ys.*

And therefore the marshal of said district of Connecticut is commanded that he cause to come here immediately twelve, &c., by whom, &c., and who, &c., to recognize, &c., because as well, &c.

And the jurors of said jury, by the marshal for this purpose empannelled and returned, to wit, Wait B. Wilson, Elizur Barber, Austin A. Humphrey, William E. Tanner, Henry Thurston, Albert Wilcoxon, George W. Strong, Stillman N. Deming, George O. Chambers, Bulkley Edwards, Henry W. Parkus, James Andrews, being called, came, who, being elected, tried, and sworn to speak the truth of and concerning the premises, upon their oaths say as follows, to wit:

DISTRICT OF CONNECTICUT, *ss:*

Circuit court. April term, A. D. 1871.

MINERAL SPRINGS COMPANY
v.
MICHIGAN CENTRAL R. R. COMPANY. } No. 51. Action on the case, &c.

In this case the jury find the issues for the plaintiffs, and therefore find for the plaintiffs to recover of the defendants the sum of six thousand and seventy $\frac{86}{100}$ dollars ($6,070 86) damages, together with their costs.

31 Thereupon and on the same day, being the 27th day of April, A. D. 1871, the defendants filed in court the following bill of exceptions, to wit:

United States circuit court, district of Connecticut.

MINERAL SPRINGS M'F'G CO.
vs.
MICHIGAN CENTRAL RAILROAD CO.

Bill of exceptions filed by the defendants at the April term of said court, A. D., 1871, upon the trial to the jury of the above-entitled cause, to wit, on April 27th, 1871.

Be it remembered that in the trial of the above-entitled cause the defendants excepted to the refusal of this court to instruct the jury in matter of law as requested by the defendant, and to such refusal the defendants file this their bill of exceptions.

The verdict and judgment were rendered upon the second count of the plaintiff's declaration, and it appeared in evidence that, at Jackson, in the State of Michigan, about seventy-five miles west of Detroit, V. M. Bostwick, therein named, delivered to the defendant certain wool

32 to be by them carried and delivered, according to the terms, conditions, and stipulations of a receipt and contract, copy whereof is hereto annexed, marked "A," and according to certain instructions, as to the transportation of said wool from said Detroit eastward, given by

said Bostwick to the defendants at the time of the delivery of said wool to the defendants.

That at the time the wool was received by the defendants at said defendants had received, carried over their road, and acc in their depot at Detroit more than two thousand barrels freight which was entitled to transportation over their road without preference or partiality, and a clause of defendant's charter relating thereto is as follows: "And said company shall transport merchandise and property on said road without showing partiality or favor and with all possible despatch under a penalty for each violation hereof of $100, to be recovered by the aggrieved party in an action of debt." (Defendant's charter, sec. 15.)

That a bill of lading was sent with the goods, embodying the instructions of said Bostwick as to the carriage of the wool beyond the eastern terminus of the route of the defendants at Detroit, copy whereof is hereto annexed and marked B. It also appeared that from said
33 Detroit eastward were several lines of transportation by which said goods might have been forwarded to their place of final destination, but that there was only one transportation line propelled by steam on the lakes, which line was a line of propellers running from Detroit to Buffalo where they connected with the New York Central Railroad—*of* the other of said lines being lines by land—and that by the usual course of business of the defendants, goods received by them to be forwarded by steam on lake were immediately delivered to said line of steamboats.

That the defendants employed at their depot in Detroit a shipping-clerk, with a force of sixteen men under his directions, whose duty and business it was to superintend the delivery to said line of propellers of goods so received of the defendants to be forwarded by steam on the lakes, as said propellers were ready to receive the same. It also appeared that, at the time their goods were received by the defendants at Jackson, and for a period of at least two weeks prior thereto, it was beyond the ability of said line of propellers, with their ordinary and usual means of transportation and in the regular course of their business, to receive and transport the freight which was then in defendant's depot at Detroit and being therein accumulated for such further car-
34 riage as rapidly as it was then being brought by the defendants to their said depot.

The defendants had no other business connections with the said line of propellers, the carrier next in line; but it did appear that when said wool was so received by the defendants at Jackson the defendants then had knowledge, by its agents and officers, of such accumulation at their depot in Detroit, and of the limited ability of said line of propellers to receive and transport said goods towards the point of their final destination, though it does not affirmatively appear that the plaintiff or said Bostwick, or the station-master at said Jackson who received said wool, were informed or had any knowledge thereof. And defendants had been and were then and from time to time, by its agents, urging upon said carrier the increase of the temporary facilities by the employment of additional boats to run between Detroit and Buffalo for the more speedy carriage of such accumulating and accumulated freight. And the said wool was carried over the road of the defendants to its depot at Detroit, and while there ready to be delivered in due course to the carrier next in line, the defendants being at all times after it was received into their depot ready to make such delivery for further transportation upon the route indicated. And after it had remained in said depot of the

and say that the allegations contained therein are not true, and this they pray may be inquired of by the country.

30 PLAINTIFF,
By HYDE & SHIPMAN, *Att'ys.*

And therefore the marshal of said district of Connecticut is commanded that he cause to come here immediately twelve, &c., by whom, &c., and who, &c., to recognize, &c., because as well, &c.

And the jurors of said jury, by the marshal for this purpose empannelled and returned, to wit, Wait B. Wilson, Elizur Barber, Austin A. Humphrey, William E. Tanner, Henry Thurston, Albert Wilcoxon, George W. Strong, Stillman N. Deming, George O. Chambers, Bulkley Edwards, Henry W. Parkus, James Andrews, being called, came, who, being elected, tried, and sworn to speak the truth of and concerning the premises, upon their oaths say as follows, to wit:

DISTRICT OF CONNECTICUT, *ss:*

Circuit court. April term, A. D. 1871.

MINERAL SPRINGS COMPANY
v.
MICHIGAN CENTRAL R. R. COMPANY. } No. 51. Action on the case, &c.

In this case the jury find the issues for the plaintiffs, and therefore find for the plaintiffs to recover of the defendants the sum of six thousand and seventy $\frac{86}{100}$ dollars ($6,070 86) damages, together with their costs.

31 Thereupon and on the same day, being the 27th day of April, A. D. 1871, the defendants filed in court the following bill of exceptions, to wit:

United States circuit court, district of Connecticut.

MINERAL SPRINGS M'F'G CO.
vs.
MICHIGAN CENTRAL RAILROAD CO.

Bill of exceptions filed by the defendants at the April term of said court, A. D., 1871, upon the trial to the jury of the above-entitled cause, to wit, on April 27th, 1871.

Be it remembered that in the trial of the above-entitled cause the defendants excepted to the refusal of this court to instruct the jury in matter of law as requested by the defendant, and to such refusal the defendants file this their bill of exceptions.

The verdict and judgment were rendered upon the second count of the plaintiff's declaration, and it appeared in evidence that, at Jackson, in the State of Michigan, about seventy-five miles west of Detroit, V. M. Bostwick, therein named, delivered to the defendant certain wool
32 to be by them carried and delivered, according to the terms, conditions, and stipulations of a receipt and contract, copy whereof is hereto annexed, marked "A," and according to certain instructions, as to the transportation of said wool from said Detroit eastward, given by

said Bostwick to the defendants at the time of the delivery of said wool to the defendants.

That at the time the wool was received by the defendants at Jackson, said defendants had received, carried over their road, and accumulated in their depot at Detroit more than two thousand barrels in bulk of freight which was entitled to transportation over their road without preference or partiality, and a clause of defendant's charter relating thereto is as follows: "And said company shall transport merchandise and property on said road without showing partiality or favor and with all possible despatch under a penalty for each violation hereof of $100, to be recovered by the aggrieved party in an action of debt." (Defendant's charter, sec. 15.)

That a bill of lading was sent with the goods, embodying the instructions of said Bostwick as to the carriage of the wool beyond the eastern terminus of the route of the defendants at Detroit, copy whereof is hereto annexed and marked B. It also appeared that from said
33 Detroit eastward were several lines of transportation by which said goods might have been forwarded to their place of final destination, but that there was only one transportation line propelled by steam on the lakes, which line was a line of propellers running from Detroit to Buffalo where they connected with the New York Central Railroad— *of* the other of said lines being lines by land—and that by the usual course of business of the defendants, goods received by them to be forwarded by steam on lake were immediately delivered to said line of steamboats.

That the defendants employed at their depot in Detroit a shipping-clerk, with a force of sixteen men under his directions, whose duty and business it was to superintend the delivery to said line of propellers of goods so received of the defendants to be forwarded by steam on the lakes, as said propellers were ready to receive the same. It also appeared that, at the time their goods were received by the defendants at Jackson, and for a period of at least two weeks prior thereto, it was beyond the ability of said line of propellers, with their ordinary and usual means of transportation and in the regular course of their business, to receive and transport the freight which was then in defendant's depot at Detroit and being therein accumulated for such further car-
34 riage as rapidly as it was then being brought by the defendants to their said depot.

The defendants had no other business connections with the said line of propellers, the carrier next in line; but it did appear that when said wool was so received by the defendants at Jackson the defendants then had knowledge, by its agents and officers, of such accumulation at their depot in Detroit, and of the limited ability of said line of propellers to receive and transport said goods towards the point of their final destination, though it does not affirmatively appear that the plaintiff or said Bostwick, or the station-master at said Jackson who received said wool, were informed or had any knowledge thereof. And defendants had been and were then and from time to time, by its agents, urging upon said carrier the increase of the temporary facilities by the employment of additional boats to run between Detroit and Buffalo for the more speedy carriage of such accumulating and accumulated freight. And the said wool was carried over the road of the defendants to its depot at Detroit, and while there ready to be delivered in due course to the carrier next in line, the defendants being at all times after it was received into their depot ready to make such delivery for further transportation upon the route indicated. And after it had remained in said depot of the

35 defendants for about six days, it was destroyed by a fire which did not arise from the negligence of the defendants or their agents.

The charter of the defendants contains a clause as follows: "Provided that in all cases the company shall be responsible for goods in deposit in any of their depots awaiting delivery as warehousemen and not as common carriers." (Defendant's charter, sec. 16.)

The defendant requested this court to instruct the jury that the liability of the defendants for the goods so shipped after they had reached the eastern terminus of the defendant's road at Detroit, and were unladen and deposited and remaining in their depot in manner aforesaid, and while they should remain in such depot was the limited liability of a warehouseman, importing only ordinary care.

The court declined so to instruct the jury, to which refusal the defendant then and there excepted, and did instruct the jury substantially as follows:

The defendant objects that no recovery can properly be had upon the first count which is admitted by the plaintiff.

In the second count the plaintiff charges that one V. M. Bostwick caused to be delivered to the defendant certain wool to be shipped
36 from Jackson to Detroit, and to be thence forwarded to Stafford, Connecticut, and that he gave appropriate instructions respecting it at Jackson at the time of such delivery. For the purposes of this case we instruct you that the plaintiff is bound by that allegation, and if you can find what instructions Bostwick so gave they will be your guide. The agent of the defendant at Jackson swears that the contract was made by Bostwick, as alleged by the plaintiff in the writ, and that the goods were to be sent by steam over the lakes, and that the defendant issued to Bostwick the paper "A," which is the usual receipt given by defendants at way-stations. This receipt is produced; it is found with the plaintiff, and by him brought into court. It has upon it evidence of the shipment and of its terms. Upon these facts, and our view of the law, we instruct you that if the defendants undertook to convey these goods to Detroit, thence to be transported further east by another carrier, and over another route, and if the defendants had an established course of business as to such contracts and carriage they were at liberty, and were bound to conform to that course of business. They were to forward by the usual course of business by a connecting or con-
37 tinuous line. Hastings says Bostwick said, "Forward by steam over lakes," and that is confirmed by contemporaneous entries, and by the further fact that a way-bill embodying those instructions accompanied the goods.

It was competent for the defendant to receive and act upon instructions concerning the dispatch of the goods beyond Detroit, and if they conformed to such instructions they discharged all their duties.

That the defendants were liable for said goods as common carriers during their transportation from Jackson to Detroit, and after their arrival at Detroit, for such reasonable time as, according to their usual course of business under the actual circumstances in which they held these goods, would enable them to deliver said goods to the next carrier in line, but that the plaintiff took the risk of the next carrier line not being ready and willing to take said goods from the defendants. That if, before the expiration of such reasonable time for the defendants to have delivered the said goods to the next carrier according to their usual course of business as aforesaid, said goods were destroyed, the defendants would be liable as common carriers, but that, after the

38 expiration of said reasonable time, if the defendants were ready to deliver said goods to the next carrier, and said next carriers failed or refused to receive the same, the defendants would be no longer liable as carriers, but they would then be liable as warehousemen only, and that it would be for the jury to say whether, under all the circumstances of the case in evidence before them, such reasonable time had elapsed as to these goods before the occurrence of the fire.

That the liability of a warehouseman imports only ordinary care, and unless there was negligence on the part of the defendants or its agents, it would not, after its liability as a carrier was terminated, be responsible, although the goods were destroyed, and that there did not appear to be evidence of any negligence, but rather of an unusual effort to save and preserve the plaintiff's goods.

The defendant for exceptions assigns the following, to wit: that the court should have instructed the jury that, at the time of the fire, the defendants were liable on account of the plaintiff's goods aforesaid, so in the depot of the defendants as warehousemen only, as was requested by the defendant's counsel.

Settled and allowed by the court.

W'M D. SHIPMAN, *Judge.*

39 *Exhibits annexed to bill of exceptions.*

(A.)

MICHIGAN CENTRAL RAILROAD COMPANY,

No. . *Jackson, October* 11, 1865.

Received from V. M. Bostwick, as consignor, the articles marked, numbered, and weighing, as follows:

Articles.	Marks and numbers.	Weight.
57 sacks wool.....	Mineral Springs, M'f'g Co., Stafford, C't, via Palmer.	12,302

☞To be transported over said railroad to the depot in Detroit, , and there to be delivered to , agent or order upon the payment of the charges thereon, and subject to the rules and regulations established by the company, a part of which notice is given on the back hereof. This receipt is not transferable.

HASTINGS,
Freight Agent, M. C. R. R. Co.

(Exhibit A, on back:)

Abstract from the Rules and Regulations of Freighting, as per published freight tariff:

The company will not be responsible for damages occasioned by delays from storms, accidents, or other causes, or by delay of perishable articles by heat or frost, to such as are affected thereby, or for damages to the hidden contents of packages, or by leakage or bursting, or by reason of improper packing, when received at their depots, nor will it be responsible for any merchandise, unless receipted for by a
40 duly-authorized agent, nor for a greater amount than $200 on any one package, except by special agreement and upon the pay-

ment of extra rates, and all goods and merchandise will be at the risk of the owners thereof while in the company's warehouses, except such loss or injury as may arise from the negligence of the agents of the company.

Goods consigned to irregular stations, (those not in capitals on freight tariff,) will be delivered at the nearest regular station, unless the owner gives a written order to deliver them at the irregular station, at his risk.

Freight delivered at side tracks, will be accounted for as it tallied or weighed into the cars by the company's agent, at the point where it started.

The contents of all boxes or packages containing gold, silver, jewelry, or plate, and all similar articles, must be disclosed to the officers of the company at the time the same shall be delivered to them, or the company will not be responsible therefor, in case of loss.

EXHIBIT B.

41 No. 3460.—*Jackson to Detroit, October 12th*, 1865.

No. of car.	Consignor.	Consignee.	No. of p'k'g's.	Description of articles.	Numb. or weight.	Rates.	R. R. ch'g's.	Back ch'ge.	Where payable.	Storage.	Date of payment.	Receiver's signature.
560	V. M. Bostwick.	Min'l Springs M'f'g Co., Stafford, Conn., via Palmer, Mass., steam on lakes. (Do not insure on lakes.)	32	Bales wool, (2 in bo.)	7104	24	17 05	02	Detroit.			Agent.
912			25	" "	5198	"	12 42					

42 (Exhibit B, on back:)

Michigan Central Railroad. Way-bill of merchandise. Car
Detroit. To
187 No. $

And thereafter the defendants, on the 28th day of April, A. D. 1871, filed in court their motion for a new trial, in the words and figures following, to wit:

Circuit court of United States, District of Connecticut. April term, 1871.

MINERAL SPRINGS M'F'G CO.
vs.
MICH. CENTRAL RAILROAD CO. } No. 51.

Present, J. J. Woodruff & Shipman.

In the above-entitled case the jury having rendered a verdict for the plaintiff, the defendant moves for a new trial of the cause, and files the following as the grounds of such motion:

First. Because the verdict is without evidence.

Second. Because it is against evidence; and

43 Third. Because it is against the weight of the evidence upon the issue submitted to the jury in the cause.

Fourth. Because it is against the instructions of the court upon the issues of law in the case.

In support of the motion, the defendant refers to the depositions and papers on file in the case, and to the oral evidence, statement whereof is hereto annexed, and to the instructions of the court also annexed.

April 28, 1871.

MICH. CENTRAL R. R. Co.
By CHAMBERLIN & HALL, *Att'ys.*

And, thereafter, at the same term of said court, the said parties were fully heard by their counsel on said motion for a new trial; and said motion for a new trial is denied, whereupon it is considered by the court here, on this 2d day of May, A. D. 1871, that the plaintiff do recover of the defendant the sum of six thousand and seventy $\frac{50}{100}$ dollars damages, and their costs, taxed and allowed at the sum of one hundred eighty $\frac{38}{100}$ dollars by the court here to the plaintiff adjudged, and have execution therefor.

44 And now, on the same day, the defendant files in court his petition for a writ error, and his bond for the prosecution of the same in the words and figures following, to wit:

Petition for writ of error.

Circuit court of the United States, district of Connecticut.

MINERAL SPRINGS M'F'G CO.
vs.
MICH. CENTRAL R. R. CO.

To the honorable the judges of the circuit court of the United States for the second circuit and district of Connecticut:

The petition of the said Mich. Cent. R. R. Company, defendant in the above-entitled action, respectfully represents that said defendant is aggrieved by the final judgment rendered against this said defendant in the said action upon the docket of this court, and is informed there is error therein to its prejudice, and he desires that a writ of error be allowed him therefrom to the Supreme Court of the United States. Wherefore the said defendant prays that a writ be allowed, returnable to the next term of the Supreme Court of the United States.

MICHIGAN CENTRAL RAILROAD CO.,
By F. CHAMBERLAIN, *of Counsel.*

45 Circuit court of the United States, district of Connecticut.

MINERAL SPRINGS M'F'G CO.
vs.
MICH. CENT'L R. R. CO.

Know all men by these presents that we, F. Chamberlain, of Hartford, in the State of Connecticut, as principal, and Ezra Hall, of said Hartford, as surety, are held and bound unto the Mineral Springs Manufacturing Co., a corporation under the laws of the State of Connecticut, and located at Stafford, in said State, in the full and just sum of ten

thousand dollars to the said Mineral Springs Manufacturing Company, or their assigns; to which payment, well and truly to be made, we bind ourselves and our heirs severally by these presents.

Whereas, lately at a circuit court of the United States, second judicial circuit, holding sessions in and for the district of Connecticut, in a suit depending in said court, wherein said Mineral Springs Manufacturing Co. is plaintiff, and the said Michigan Central Railroad Company is defendant, judgment was rendered against the said railroad co., and the said railroad company having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court to reverse the
46 judgment in the aforesaid suit, and a citation addressed to said Mineral Springs M'f'g Co., and admonishing the said Mineral Springs M'f'g Co. to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next:

Now the condition of the above obligation is such, that if the said railroad co. shall prosecute its said writ to effect and answer such judgment and all costs if they fail to make their plea good, then the above obligation to be void; else in full force.

Signed and sealed this 27th day of April, A. D. 1871.

F. CHAMBERLAIN. [L. S.]
EZRA HALL. [L. S.]

Filed and approved by—

W'M D. SHIPMAN, *Judge.*

Whereupon said writ of error is allowed to the Supreme Court of the United States, and execution stayed until the coming in of the mandate thereof.

Attest:

LOREN P. WALDO, *Clerk.*

47 I, Loren P. Waldo, clerk of the circuit court of the United States for the district of Connecticut, do certify that the foregoing is a true copy of the original process, pleading, and proceedings in, and all things concerning the cause of the Mineral Springs Manufacturing Company against the Michigan Central Railroad Company, remaining on file and of record in this said court.

In testimony whereof I have set hereto my name and the seal of said court, at Hartford, in said district, this 1st day of July, A. D. 1871.

[SEAL.] LOREN P. WALDO, *Clerk.*

48 Supreme Court of the United States.

MINERAL SPRINGS M'F'G CO., OF STAFFORD, Connecticut, *vs.* MICH. CENTRAL R. R. CO. OF MICHIGAN. } In error.

Of Dec. term, A. D. 1871.

Afterwards, to wit, on the first Monday of December, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Michigan Central Railroad Company, by F. Chamberlain, its att'y, and says that in the record and proceedings aforesaid, there is manifest error in this, to wit,

that by the record aforesaid, it appears that the court should have instructed the jury upon the trial of said cause that, at the time of the fire which destroyed the wool of the plaintiff, the defendants were responsible therefor as warehousemen only, and not as common carriers, whereas in fact the court refused so to instruct the jury, and by reason thereof judgment was given for said plaintiff; whereas by the law of the land the said judgment ought to have been, upon the law of the case, for the said defendant, and the said Michigan Central Railroad Company prays that the judgment aforesaid may be reversed, annulled, and
49 altogether held for nothing, and that it may be restored to all things which it has lost by said judgment, &c.

F. CHAMBERLIN,
Att'y for P'tf. in Error.

(Indorsement on cover:) No. 329. The Michigan Central Railroad Company, plaintiff in error, vs. The Mineral Springs Manufacturing Company. Connecticut C. C. U. S. Filed 31st July, 1871.

REC. 329—2

SUPREME COURT OF THE UNITED STATES.

MICHIGAN CENTRAL R. R. CO.,

PLAINTIFFS IN ERROR,

VS.

MINERAL SPRINGS MANFG. COMPANY,

DEFENDANTS IN ERROR.

F. CHAMBERLIN,

Counsel for Pltfs. in Error.

Supreme Court of the United States.

MICHIGAN CENTRAL RAILROAD COMPANY,

PLAINTIFF IN ERROR,

VS.

MINERAL SPRING MANUFACTURING COMPANY,

DEFENDANTS IN ERROR.

Statement of Case.

This case comes to this court, upon exception to the charge of the Judge, upon a hearing and trial to the jury in the circuit court of the United States for the District of Connecticut.

The plaintiff in error is a corporation created by and existing under and according to, a charter granted by the Legislature of the State of Michigan; having a railroad in said State, and a depot and its principal office and place of business at Detroit; and was at the time of the carriage of the wool, damage to which is claimed to have been done in plaintiff's depot by fire, engaged in business as a common carrier and also as a warehouse man, under and pursuant to the powers granted by said charter, and under the limitations and restrictions and beneficial provisions therein set forth.

The special clause of said charter upon which (among other things) the plaintiff in error relied, is as follows: "Provided that in all cases the company shall be responsible for goods in deposit in any of their depots, awaiting delivery, as

warehousemen, *and not as common carriers.*" Defendant's charter, Sec. 16, Record, p. 12.

The receipt given for the goods and which constituted the contract between the parties, was as follows: "Michigan Central R. R. Co., Jackson, October 11, 1865. Received from V. M. Bostwich as consignor, the articles marked, numbered, and weighing as follows:

Articles.	Marks and Numbers.	Weight.
57 sacks wool.	Mineral Springs Mf'g Co., Stafford, Ct., via Palmer.	12,302

To be transported over said railroad *to the depot*, in Detroit, and *there to be delivered* to agent or order, upon the payment of the charges thereon, *and subject to the rules and regulations established* by the company, a part of which notice is given on the back hereof. This receipt is not transferable." Hastings,

Freight Agent, M. C. R. R. Co."

Upon the back there was, among other things, the following provisions:

"The company will not be responsible *for damages occasioned by delays* from storms, accidents *or other causes*," &c., &c., "and all goods and merchandise will be at the risk of the owners thereof *while in the company's warehouses, except such loss or injury as may arise from the negligence of the agents of the company.*"

Record, pp. 13 and 14.

The way bill is set forth on p. 14 of record, and indicates that they were to be carried, beyond the line of the route of plaintiff in error, by steam on lake, and were not to be insured, &c., p. 14, record.

The headings upon the bill of lading indicate that there will be (among other items) "Back charges" and "*Storage.*"

The circumstances under which the wool was received, carried, and stored by the plaintiff in error, are set forth in detail in the bill of exceptions. Record, pp. 10, 11 and 12.

It was to be "carried and *delivered* according to the terms, stipulations and conditions" of the *receipt*. Record, p. 10.

The "*delivery*" therein stipulated for, was to be at defendant's depot *in Detroit*. Record, p. 13.

There was but one line of steamers by which the wool could properly be forwarded, beyond the route of plaintiff's. Record, p. 11.

Plaintiff had a suitable force, to "*superintend*" delivery to that line; of goods received to be forwarded by them—"*as said propellers were ready to receive the same.*"

It was beyond the ability of said line to receive and transport the goods, then brought to plaintiff's depot for it, as rapidly as they were then being brought.

In this condition of things the "wool was carried over the road of the defendants, (plaintiffs here) to its depot at Detroit, and *while there, 'ready to be delivered' in due course to the carrier next in line*, the defendants (plaintiff in error) *being at all times, after it was received into their depots ready to make such delivery*, for further transportation on the route indicated, and after it had remained in said depot for about six days, it was destroyed by a fire *which did not arise from the negligence of the defendants or their agents.*" Record, p. 12.

Upon these facts and under these circumstances the defendant (plaintiff in error) requested the court to instruct the jury "that the liability of the defendant for the goods so shipped, after they had reached the eastern terminus of the defendants' road, at Detroit, and were unladen and deposited and remaining in their depot in manner aforesaid, and while they should remain in such depot, was the limited liability of a warehouse man, importing only ordinary care." Record, p. 12.

The court declined so to instruct; and did instruct the jury as is set forth on page 12 and 13 of record.

The gist of the instruction actually given, so far as it relates to the questions before this court, is in the paragraph at bottom of p. 12 and at top of p. 13.

"That the defendants were liable for said goods as common carriers, during their transportation from Jackson to Detroit, and *after their arrival at Detroit for such reasonable time as, according to their usual course of business, under the actual circumstances under which they held these goods, would enable hem to deliver said goods to the next carrier in line*," etc.

"*That if before the expiration of such reasonable time for the defendants to have delivered said goods to the next carrier according to their usual course of business as aforesaid, said goods were destroyed, the defendants would be liable as common carriers.*"

It was left to the jury to decide whether such reasonable time had elapsed, etc.

But the plaintiff in error says, the undisputed facts found and stated in the bill of exceptions bring the case clearly within the exemptions set forth in the charter of the R. R. Co., and in the contract of carriage.

Assignment of Errors.

The error complained of was, the refusal of the judge to instruct the jury upon the facts, charter and contract set forth in the foregoing statement, that at the time of the fire which destroyed the wool of the defendants in error, the defendants were responsible as warehousemen only and not as common carriers.

PLAINTIFF'S POINTS.

I.

The charter of Plaintiff's is first to be consulted and relied upon in determining the measure of Plaintiff's responsibility.

From the charter, we learn that they were not to be responsible, as common carriers, but only as warehousemen; while the wool should be in deposit in a depot "*awaiting* delivery."

Charter, sec. 16. Record, p. 12.

This Statute of the State of Michigan has had construction given it by the highest court of that State in Mich. Cent'l R. R. Co. *vs.* L. D. Hale, *et al.*, 6 Mich. 243, 245, in which case it was held that "property in deposit in the depots," is to be construed as "awaiting delivery," as soon *as it is in condition to be delivered*, over to the consignee when demanded, and not merely from the time when the right to charge for storage has accrued."

The exceptions find that while their wool was there "*ready to be delivered*," etc., it was destroyed.

Record, foot of p. 11.

"The defendants being *at all times*, after it was received into their depot, "*ready* to make such delivery," etc. *ib.*

See also Redfield on Common Carriers, sections 113, 114, and 126, pp. 100 and 101—refers to Plaintiff's Charter.

This construction so given is binding upon this court as a part of the Statute.

Leffingwell *vs.* Warren, 2 Black, 603.

See also 6 Wallace, 628.

This court follows the *latest* adjudications. Leffingwell's Case, 2 Black, 603.

Is there any substantial or sensible difference between "*goods in situation to be delivered*," as the Supreme Court of Michigan express it, and goods "*ready to be delivered*," as the exceptions here find?

The expression in the exceptions is, if possible, intensified by the finding referred to above, that "the Defendants were *at all times*, after the wool was received into their depot, *ready* to make delivery."

3 Mich., 39.
16 " 243?

The variance between the charge of the judge and the plain meaning of the statute of Michigan, and also the

meaning as authoritatively given by the Supreme Court of that State, is that the charge extends the liability of the corporation *as carriers* so as to *include* delivery, or such reasonable time as would have enabled it "to *have* delivered;" while the statute and the Supreme Court of Michigan plainly limit it to a point anterior to delivery.

The language of the statute being "*awaiting* delivery," and that of the court being "in condition *to be* delivered."

The finding as to the condition of these goods is, that the "defendants were *at all times*, after the wool was received into their depot, *ready* to make delivery." Record, p. 11, bottom of page.

And "*ready* to be delivered." *Ib.*

The charge of the Judge in express and clear language extends the liability of the company as common carriers, over the precise time, ("while *awaiting* delivery") during which exemption is secured by statute.

It seems difficult to imagine any ground upon which the defendants in error *will claim* that the charge *can* be sustained unless it be by attempting to distinguish between a case in which the goods are at the final terminus of their carriage, and this in which they are to be delivered to another carrier, selected by the defendant in error, for further carriage.

But we submit that there is here no ground for such a distinction. The purpose of the statute is clearly to limit the strict and absolute liability of carriers to and during *the time of carriage*, and exempt them from such extraordinary liability while the goods should be in the company's warehouses, for the accommodation of the owner.

It is equally for the convenience and accommodation of the owner that the goods be stored intermediately, at their final destination *so far as concerned the plaintiff in error*, as at the final destination *of the goods*.

This proposition has been repeatedly recognized and affirmed since the leading case of Garside *vs.* Trent. and Mersey Navigation Co., 4 Term. R., 581.

See Story on Bailment, Sec. 538, 448.
Thomas *vs.* Boston and P. R. R. Co., 10 Met., 478, 479.
Moore *vs.* Mich. Cent. R. R. Co., 3 Mich. 39.
Redfield on Railroads, Secs. 113, 114, and 126.
Worden *vs.* Bemis, 32 Conn., 268, 274.

In the last named case, the court held that the carrier next in line was *agent* of the owner to receive, deliver, and forward the goods. See case pp. 274. 275 and read.

In the case in 4 Term. R., Butler, J. says: "The keeping of the goods in the warehouse is not for the convenience of the carrier, but of the owner of the goods, for when the voyage *to Manchester* is performed, it is for the interest of the carrier to get rid of them directly, and it was only becau e there was no person ready at Manchester to receive them, that the defendants were obliged to keep them." Cited with approval. 10 Met. 478, 479.

In that case the goods were to go *beyond* Manchester.

In the work on Bailments Judge Story says: "If a carrier between A and B receives goods to be carried from A to B, and thence forwarded by a distinct conveyance to C, as soon as he arrives with the goods at B and deposits them in his warehouse there, his responsibility as *carrier* ceases, for that is the termination of his duty *as such*." "*He then becomes or to the goods a mere warehouseman*, undertaking for their further transportation." Story on Bailments, sec. 538.

"The language of the learned author is equally pertinent and significant in Sec. 448."

"When the goods have arrived at the place of their fixed destination and are there deposited in the carrier's warehouse, to await the convenience of the owner in sending for them, *or for the purpose of being forwarded by some other carrier* to another place, then his duty as carrier ends on the arrival of the goods at his (the carrier's) warehouse, and his duty as warehouseman commences."

So in the case in 3 Mich. (Moore *vs.* Mich. Cent. R. R. Co.) The Supreme Court of Michigan says: "In the absence of

any special contract, the defendants would have discharged themselves as common carriers by the deposit of the property in their depot."

Here then, the general law, the express provision of plaintiff's charter, and the special contract all concur in bringing us to the same result.

There is clearly no difference which is material to the plaintiffs, between goods to be delivered to the owner at their final destination, and goods deliverable to the owner or his agent for further carriage.

The controlling fact is, that the plaintiff's duty *of carriage* is completed, and the goods are stored for the convenience of the owner. The office of the plaintiffs is in both cases the same, the carriage is the same, and the delivery to the person entitled to receive them is precisely the same in the one case as in the other. If the goods are to go farther by an independent line, the next carrier stands in place of the owner or consignee, so far as the first carrier is concerned, and as soon as the function of carriage proper is performed; that is, in this case, as soon as we place them in the depot "ready to be delivered" over, they are "awaiting delivery."

The language of the charge might possibly be construed as intending to define the expression used by the Judge, "reasonable time," with reference to the glut of goods in plaintiff's depot, and the *ordinary* means of the next carrier to take them, and the time which would be required *to effect an actual delivery*.

But such a position would be clearly untenable for several reasons;

1st. It has no foundation in anything in plaintiff's charter, but is clearly at variance with its provisions, and also with the provisions of the contract.

2d. It is at variance with the common law rule as shown in the authorities referred to.

3d. It would be a rule of exceeding difficulty in its application, and could hardly be made definite or certain.

4th. It makes the period of plaintiff's liability depend on the acts and conditions of those over whom plaintiff has no possible control.

5th. Under it the period of *extreme* liability, for goods of the same class, received at the same time and place, carried in the same car, and placed in the depot on the same day, and made "ready for delivery," so far as plaintiff is concerned, at the same hour; but, to go forward by a different carrier, might be wholly different, depending on the ordinary means of the two carriers to receive and forward the goods.

It will hardly be denied that the carrier's liability should depend on *his own* duties and relations to the goods.

The plaintiffs could not refuse to receive the goods when its means of carriage are ample, nor could it refuse to retain them in its depot "ready for delivery," till the carrier next in line should be ready to receive them.

Reasonable time "to *have* delivered;" the facts being ascertained as here, is a question of law.

II.

The condition of the contract was binding upon the defendants in error, and entitled the Plaintiffs, upon the facts found, to the instruction prayed for.

"All goods and merchandise will be at the risk of the owners thereof, while in the company's warehouses, except such loss or injury as may arise from the negligence of the agents of the company." Record, p. 14.

"The receipt without dissent by a consignor of a bill of lading, by which the carrier stipulates against liability for loss by fire, discharges the carrier from liability for such loss not caused by his own negligence."

Grace *vs.* Adams, 100 Mass., 505.

In an action against a carrier, evidence is not admissible in the absence of fraud, to show that the consignor did not read the terms of the bill of lading." *Ib.*

See the case and cases there referred to.

The common law liability of a carrier for the safe carriage of goods may be limited and qualified by special contract with the owner, provided such special contract does not attempt to cover losses by negligence or misconduct."

"Thus, where a contract for the transportation of cotton from Memphis to Boston, was in the form of a bill of lading, containing a clause exempting the carrier from liability for losses by fire, and the cotton was destroyed by fire; the exemption was held sufficient to protect the carrier, the fire not having been occasioned by any want of care on his part.

York Co. *vs.* Central R. R. Co., 3 Wallace, 107.

See also Camden & Amboy R. R. Co. *vs.* Forsyth, 61 Pa. State, 81.

To same effect.

Lawrence *vs.* N. Y. & P. R. R., 36 Conn., 63; 6 Blatchford, 64.

"A bill of lading fixes the rights of the parties, when its terms have been agreed upon, and its acceptance by the consignor without objection is an implied assent to its terms."

McMellan *vs.* R. R. Co., 16 Mich., 79. See pp. 114, 116, and 126–130.

Manhattan Oil Co. *vs.* Camden & Amboy R. R. Co., 52 Barbour.

F. CHAMBERLIN.

Counsel of Plaintiffs in Error.

Supreme Court of the United States,

DECEMBER TERM, 1872.

The Michigan Central Railroad Co., Plaintiffs in Error,

vs.

The Mineral Springs Manufacturing Co.

BRIEF FOR DEFENDANTS IN ERROR.

A. P. HYDE, of Counsel.

Supreme Court of the United States,

DECEMBER TERM, 1872.

THE MICHIGAN CENTRAL RAILROAD CO.,
PLAINTIFFS IN ERROR,

vs.

THE MINERAL SPRINGS MANUFACTURING CO.

BRIEF FOR DEFENDANTS IN ERROR.

Upon the facts, as stated by the Court, pages 10, 11 and 12 of the record, it appears that on the 11th of October, 1865, the Plaintiffs in Error were a railroad corporation and common carriers, and at Jackson in the State of Michigan they received the wool in question which was billed and marked to Stafford, Conn., and undertook to convey the same to Detroit, and there to deliver the same to a line of propellers on the Lake, according to their usual course of business, which line of propellers was the next carrier upon the route eastward from Detroit.

That after the wool had arrived at the Plaintiffs Depot in Detroit and before delivery to the next carrier it was destroyed by fire.

The Court charged the jury, page 12 of the record, that the Plaintiffs in error were liable for the goods as common carriers during their transportation from Jackson to Detroit and after their arrival at Detroit, for such reasonable time as, according to their usual course of business under the actual circumstances in which they held their goods, would enable them to deliver said goods to the next carrier in the line, &c., &c., and submitted to the jury to say whether under all the circumstances of the case, in evidence before them, such reasonable time had elapsed as to these goods, before the occurrence of the fire.

The jury having found this issue against the Plaintiffs in Error, we have therefore this additional fact established.

In determining the law as applicable to this case we are, then, to assume as established that though the wool had arrived at the Plaintiffs depot when it was destroyed by fire, yet, after its arrival such reasonable time, as would enable the Plaintiffs to deliver the wool to the next carrier according to their usual course of business, had not elapsed.

Although the Plaintiff's in Error, in the Court below, excepted to this finding by the jury and filed a motion for a new trial, on the ground that the verdict was against the evidence in the case, that motion was denied by the Court and this ruling of the Court below is not before this Court for revision.

No fact happening after the arrival of the goods at the depot in Detroit, other than the lapse of time before the fire, appears in the case, which can in any way modify or change the liability of the Plaintiffs in Error as common carriers. It does not appear that the Plaintiffs had delivered or offered to deliver the wool to the next carrier or had notified the Propeller Company of its arrival and their readiness to deliver. Neither had the Plaintiffs done any act like storing the wool in a warehouse indicating an intention to renounce their liability as carriers and assume that of warehousemen only.

The Plaintiffs in Error are therefore compelled to claim, and as we understand them do claim, that the law is so, that they ceased to be liable as common carriers and became responsible as warehousemen only, the moment the wool arrived at the depot at Detroit—for as we have seen there was no act of the *parties* after the arrival which modified or changed their liability—and if their liability as carriers would cease after a reasonable time had elapsed to enable them to make delivery according to their usual course of business, that fact has been found against them.

If this claim of the Plaintiffs is correct it must result from one of the following considerations:

1st. Because such is the rule of the Common Law, or,

2nd. It must result from the provisions of the Plaintiffs charter, or,

3d. From the terms of the receipt given by the Plaintiffs when they received the goods.

I.

As to the rule of the Common Law:

We claim it to be the duty of the carrier to safely convey, and *deliver* the goods to the consignee, and although in the case of railroad corporations as common carriers, goods must be delivered and received at the stations of the company, yet the strict liability of a common carrier remains until the consignee has a reasonable opportunity to inspect and receive the goods after their *arrival*.

In Norway Plains Co., *vs.* Boston & Maine R. R. Co., 1 Gray, 263, the Supreme Court of Massachusetts held, substantially, that when goods transported by a railway company arrived at the point of their final destination and were unloaded in their depot, the railroad company, *eo instanti*, ceased to hold the goods as common carriers, and thereafter were responsible as warehousemen only.

It will hardly be denied that this decision was a departure from the law, as it had previously been understood and administered. The principal consideration which has been urged in its favor, is that this rule, fixing the termination of the carrier's liability, is certain and easy of application.

But with all due respect for the able Court which announced it, it seems to us unreasonable that the carrier should be relieved of the stringent liability, which the law has imposed, at the moment the goods have been unloaded into a depot, where they are most exposed to loss by reason of the dishonesty or carelessness of employees, and before the owner has an opportunity to take them into his own custody.

We are aware that this doctrine was at first received with considerable approbation by the courts of some of the other states, but we think the general current of authority, especially of the *later* decisions, has been adverse.

Soon after this decision was rendered, the Supreme Court of New Hampshire, in the case of Moses *vs.* Boston and Maine Railroad Company, 32 N. Hamp. 523, were called upon to determine the law upon the same facts, as this case grew out of the same fire, and it was decided that the liability of the carrier continued until the consignee had a reasonable opportunity to remove the goods during the usual hours of business. The Court comment upon and disapprove of the rule laid down in the case of Norway Plains Co. *vs.* The Boston & Maine Railroad Co.

In a late case in Vermont, J. & A. Blumenthal *vs.* Brainard *et al*, 38 Vt. 402, 413, the Court discuss the merits of the two cases just referred to, and approve of

the doctrine of the New Hampshire Court, and hold that the carrier's liability continues after the arrival of the goods at the depot until the owner or consignee has had a reasonable opportunity to examine and take them away.

So, too, the Supreme Court of Wisconsin, in Wood *vs.* Crocker, 18 Wisconsin, 345, after discussing and contrasting the two decisions, adopts that of the New Hampshire Court as enunciating the true rule.

In Graves *vs.* The Hartford and New York Steamboat Co., 38 Conn., 143, Seymour, Judge, in giving the opinion of the Court, after commenting upon Gatliffe *vs.* Bourne, 4 Bing., N. C., 314, says: "We think Chief Justice Tindall expresses the true rule governing the duty of carriers, to wit, that they are bound as carriers to deliver the goods to the consignee, provided the consignee appears within a reasonable time to receive them, and that the consignee is entitled to a fair and reasonable opportunity to receive his goods before the carrier can deliver them over to himself or to another as warehouseman."

In Buckley *vs.* The Great Western Railroad Co., 18 Mich., 121, it is held that "In the absence of any usage, special circumstances or agreement, the liability of railway corporations for goods in warehouses awaiting delivery, is that of common carriers."

The rule in New York is the same. Miller *vs.* The Steam Navigation Co., 6 Seld., 431; Goodman *vs.* Baltimore & Ohio R. R. Co., 58 Barb. 195.

See also Morris & Essex R. R. Co. *vs.* Ayers *et al.*, 5 Dutch. 393.

Bartholomew *vs.* St. Louis, J. & C. R. R. Co., 53 Ill. 227; Richardson *vs.* Goddard, 23 How. 28, 39.

But whatever doubt may exist as to the rule to be applied when the goods have arrived at their final destination, there can be no question as to the liability of a carrier who receives goods, the final destination of which are beyond his particular line.

The liability of the carrier *thus* receiving goods, is clearly to carry safely and *deliver* to the next carrier upon the route; and the liability of such party so receiving goods, is ordinarily that of a common carrier, and so continues till delivery is made to the next carrier on the route.

Redfield on Carriers, §§ 114, 115, 184 *n*.

In such case (which is the case now under consideration) there is no disagreement in the American authorities.

In Gould *vs.* Chapin, 20 N. Y., 259, the head-note is as follows:

"A carrier in possession of goods, to be delivered to a subsequent carrier for transportation, remains liable as insurer, although the second carrier, after notice and request so to do, has neglected for an unreasonable time to receive them."

"In order to exonerate himself the carrier must store the goods in a warehouse where there is opportuntity to do so, or in some other way clearly indicate his renunciation of the relation of carrier."

In Ladue *vs.* Griffith, 25 N. Y., 364, the head-note is as follows:

"Public policy, in this country, of long routes and frequent transhipment, forbids any intendment which would favor an intermediate carrier in divesting himself of that character and assuming the more limited responsibility of a forwarder"; and on page 367, the Court says, "while the goods are in the process of transportation from the place of their receipt to the place of their destination, it will never do in this country, in my opinion, to subject them, in the hands of any carrier, or by his act or order, to the responsibilities of a mere warehouseman." And again, "It would never do to hold that at any intermediate point, such goods, at the option of the carrier, might be stored in a warehouse, and the carrier relieved thereby of his proper responsibility."

In McDonald, Adm., *vs.* Western R. R. Co., 34 N.Y., 497, the head-note, fully sustained by the opinions of Smith and Hunt, Judges, is as follows:

"Where goods are shipped and must pass through the hands of several intermediate carriers before arriving at the place of their destination, the duty of each intermediate carrier is to transport the goods safely to the end of his route and deliver them to the next carrier on the route beyond."

"An intermediate carrier in such case does not relieve himself from liability by simply unloading the goods at

the end of his route, and storing them in his warehouse, without delivery or notice to, or any attempt to deliver to the next carrier."

On page 502, Judge Smith, in giving the opinion of the Court, says: "As a general rule, the storing under such circumstances should be held to be a mere accessory to the transportation, and the goods should be under the protection of the rule which makes the carrier liable as an insurer from the time the owner transfers their possession to the first carrier till they are delivered to him at the end of the route."

In Dunson *vs.* N. Y. Central R. R. Co., 3 Lansing, 265, a similar doctrine is maintained.

See also Condict *vs.* The Grand Trunk R. R. Co., 4 Lansing, 106.

And in a late and well reasoned case, Lawrence *vs.* Minnesota & St. Paul R. R. Co., 15 Minn., 390, the same doctrine is adopted as sustained by reason and authority.

We do not deny that circumstances may arise which will justify an intermediate carrier in warehousing goods at the end of his route and before they have reached their

destination, unless the carriage
some such unexpected and unavoidable manner.

II.

Are the Plaintiffs relieved from liability under the pro-

This whole section clearly refers to cases where the goods have arrived at their *final* destination and are waiting delivery to their *owner*.

Michigan Cen RR Co v Hall 6 Mich 243

In the case of the Michigan Central R. R. Co. *vs.* Ward, 2 Mich., 538 the Supreme Court of that State not only held in accordance with our claim, but went further, and held that the words "awaiting delivery" applied to the goods only after notice given to the consignee as specified in the charter.

But there is nothing in this decision which can justify the claim of the Plaintiffs in this case.

The Court say upon page 255, "goods are on deposit in the depots of the company either awaiting transporation or awaiting delivery. This section has reference only to goods which have been transported and placed in the Company's depots for delivery to the consignee," &c.

In this case the goods were clearly awaiting *transportation.*

So, too, the Court carefully guard against the construction, that the responsibility of the company as carriers ceases upon the arrival of the goods in their depot, even though at the point of their final destination, for on page 254, in determining what is meant by the words "awaiting delivery," they say, "By this we do not mean to be understood that the mere deposit of the goods in the depot was sufficient, &c.," and again "now property is awaiting delivery as soon as it is in a situation to be delivered over to the consignee when demanded."

In the late case of Mills *vs.* The Michigan Central R. R. Co., 45 N. Y. 622, the questions decided were identical with those before this Court.

That suit was brought to recover for the loss of goods burned in the same depot and by the same fire as in this suit.

The decision in the above case would seem to be decisive of the case now before the Court.

III.

Are the Plaintiffs relieved from responsibility by the terms of the receipt given when the goods were received by them?

The terms of the receipt are found on pages 13 and 14 of the record, and the only words relied upon by the Plaintiffs in Error are these: "All goods and merchandise will be at the risk of the owners thereof while in the Company's warehouses," &c.

These words are found in the notice printed on the back of the receipt.

In J. & A. Blumenthal *vs.* Brainard, *et al*, 38 Vermont, 402, the Court held that a notice on the back of a receipt (which in that case was that "all goods and merchandise will be at the risk of the owners thereof while in the storehouses of the Company,") did not amount to a contract.

See also

Michigan Cent. R. R. Co. *vs.* Ward, 2 Mich., 538;

Same, *vs.* Hale, 6 Mich., 243;

McMillan *vs.* Mich. Southern &c. R. R. Co., 16 Mich, 79;

Condict *vs.* The Grand Trunk R. R. Co., 4 Lansing, 106;

Illinois Cen. R. R. Co. *vs.* Franklinburg, 54 Ill., 88;

Hooper *vs.* Wells, Fargo & Co, 2 Redfield, Am. Railway Cases, 247 and Note.

By Statute of Michigan, approved February, 1855, it is enacted as follows:

"No railroad corporation created in this State shall be suffered to lessen, or directly or indirectly abridge their common law liability as such common carriers."

Stat. of Mich., Compilation of 1871, *p.* 768, § 2344.

Also by an Act of March 27th, 1867, which, though passed after the loss in this case, yet illustrates the views of the legislature of that State as to the effect public policy requires should be given to such notices, it is enacted as follows:

"That no railroad company shall be permitted to change or limit its common law liability as a common

carrier by any contract or in any other manner, except by a written contract, none of which shall be printed, which shall be signed by the owner or shipper of the goods or property to be carried."

Stat. of Mich., Compilation of 1871, *p.* 783, § 2386.

But all the cases agree that the language of such contracts, relieving carriers of their common law liability, should receive a strict construction as against the carrier. And if we give full effect to the words in this receipt, the exemption must apply only to goods in the company's warehouses as such, and only while the company have the right by the common law, or by the consent of the owner, to warehouse the goods, and cannot apply to these goods which were in transit. In this case it does not appear that any attempt was made by the Plaintiffs to warehouse these goods, or that any act was done by the Plaintiffs indicating their intention to renounce their common law liability as carriers.

A. P. HYDE, of Counsel.